

N9LDROWC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ULKU ROWE,

Plaintiff,

v.

19 CV 08655

GOOGLE, LLC,

Defendant.

Conference

New York, N.Y.
September 21, 2023
11:00 a.m.

Before:

HON. JENNIFER H. REARDEN,

District Judge

APPEARANCES

OUTTEN & GOLDEN, LLP
Attorneys for Plaintiff
BY: CARA ELIZABETH GREENE
SHIRA ZAHAVA GELFAND
GREGORY SCOTT CHIARELLO

PAUL HASTINGS, LLP
Attorneys for Defendant
BY: KENNETH WILLIAM GAGE
SARA BRADY TOMEZSKO

N9LDROWC

1 THE DEPUTY CLERK: The case of 19-8655, *Rowe v.*
2 *Google, LLC.*

3 This is a reminder that this is a public proceeding.
4 Members of the public and press are able to access the
5 proceeding with a public dial in number. All participants are
6 reminded that any re-recording or re-broadcasting of this
7 proceeding is strictly prohibited.

8 Go ahead, Judge.

9 THE COURT: Good morning. Sorry to keep you waiting.
10 I don't like to keep busy lawyers and court reporters waiting.

11 Why don't you go ahead and make your appearances.

12 MS. GREENE: Your Honor, Cara Greene from Outten &
13 Golden for the plaintiff. And with me today is Shira Gelfand
14 and Gregory Chiarello from Outten & Golden as well.

15 THE COURT: Hello.

16 For Google?

17 MR. GAGE: Good morning, your Honor. This is Ken
18 Gage. With me is my partner, Sarah Tomezsko, and also on is
19 our client attending today, Mr. Andrew Velazquez from Google.

20 THE COURT: All right. Welcome all, so to speak.
21 Welcome via Teams.

22 All right. So we're here for a final pretrial
23 conference in this case, which is scheduled for trial on
24 October 4. The case was reassigned to me by Judge Schofield.
25 It was already trial ready by the time it came to me. I have

N9LDROWC

1 reviewed the docket, including Judge Schofield's summary
2 judgment opinion, and I would like to start by outlining what I
3 understand the basic facts to be, the allegations, based on
4 what I've seen from what I've reviewed on the docket.

5 In 2016, the CTOs of Google Cloud, William Grannis and
6 Brian Stevens established the office of the CTO, referred to as
7 OCTO. Between March 2016 and March 2018, they hired 17
8 technical directors, a position they felt was commensurate with
9 either a level 8 or a level 9 on Google's salary scale.
10 However, according to plaintiff, she was told that all
11 technical directors would be hired at a level 8. Five
12 technical directors were hired at a level 9. Plaintiff, who
13 had significant experience in the financial services industry,
14 was hired at a level 8. She was the only woman technical
15 director when she was hired, and she alleges that she had the
16 same duties as the level 9 technical directors.

17 On June 13, 2018, plaintiff expressed interest in
18 being the head of the financial services industry vertical, the
19 FSVL role under Tariq -- is it Shaukat?

20 MR. GAGE: Shaukat.

21 THE COURT: Shaukat. She claimed that she was told by
22 Grannis, Stevens and Jennifer Burdis, a recruiter, that based
23 on her experience, she was the obvious person for the role.
24 Shaukat told plaintiff he would interview her.

25 On June 25, 2018, as part of a larger reorganization,

N9LDROWC

1 plaintiff and three other OCTO employees were transferred from
2 OCTO to report to Shaukat. Their titles were changed to global
3 client technical lead.

4 After plaintiff started her new role, Shaukat wrote
5 that she was not, quote, likely right . . . for the FSVL role.
6 Plaintiff raised concerns with Grannis that she was not being
7 treated fairly. Plaintiff interviewed for the FSVL role in
8 August 2018. She was interviewed by four men, and her
9 interviewers' lack of feedback on the G-Hire platform is the
10 subject of numerous evidentiary objections.

11 That month, Shaukat determined that plaintiff was not
12 going to be a finalist for the role. Plaintiff emailed Melissa
13 Lawrence and Kevin Lucas, two internal recruiters, that she
14 thought her hiring at a level 8 was negatively impacting her
15 consideration for the FSVL role.

16 In November 2018, plaintiff emailed Shaukat and Diane
17 Greene, then CEO of Google Cloud, raising concerns about her
18 treatment during the interview process, and reiterating her
19 belief that her under-leveling impacted her candidacy. That
20 complaint was escalated to HR, which responded that the
21 leveling process was not discriminatory.

22 The same month, November 2018, Greene announced she
23 was leaving Google, and Shaukat elected not to proceed with his
24 preferred candidate for the FSVL role to give him time to
25 understand the new CEO's plans for Google Cloud. In December

N9LDROWC

1 2018, Shaukat told plaintiff that he was pausing the search,
2 but that she was not a finalist.

3 In January, 2019, Shaukat hired Stuart Breslow, who
4 had not been interviewed, as the interim head. Stuart
5 Vardaman, the lead recruiter for the FSVL role, entered
6 feedback on plaintiff that she was rejected because she lacked
7 "Googliness," was overly self-oriented, and was not qualified
8 for the role. During an internal investigation following the
9 filing of this lawsuit, Vardaman further added that plaintiff
10 was abrasive, cantankerous, and bristly, despite having
11 described her months earlier as competent, but not ego-driven,
12 forthright, with a quick operating cadence, and as someone with
13 executive poise.

14 In February 2020, after the suit had already been
15 filed, Kirsten Kliphouse, head of North American sales,
16 informed plaintiff about a new vice president for the financial
17 services industry lead position. Plaintiff reached out to
18 Vardaman to apply, and he informed her that she would not be
19 considered.

20 Does that basically capture what's in dispute here?
21 Is there anything else I should know?

22 MS. GREENE: Your Honor, for --

23 THE COURT: Go ahead.

24 MS. GREENE: The Court has accurately captured the
25 allegations here.

N9LDROWC

1 THE COURT: Mr. Gage?

2 MR. GAGE: Your Honor, I think that fairly
3 characterizes the allegations, yes.

4 THE COURT: So there are four claims to be tried, two
5 under New York's Equal Pay Law, and two under the New York City
6 Human Rights Law, correct?

7 MS. GREENE: Yes, your Honor.

8 THE COURT: All right. Each has a discrimination
9 claim and a retaliation claim. The discrimination claims
10 differ, in that under New York state law, plaintiff alleges
11 that she was paid less on the basis of her sex than men for
12 equal work, whereas under the New York City law, plaintiff
13 alleges that she was subject to discriminatory treatment
14 because of her gender.

15 Can you flesh out a bit more for me how the two
16 retaliation claims differ?

17 MS. GREENE: Yes, your Honor.

18 THE COURT: In your opinion.

19 MS. GREENE: The New York Equal Pay Law is a strict
20 liability statute, and there's no requirement that there be
21 discriminatory bias or motivation. Rather, the law looks to
22 whether a man and a woman, or whatever the two protected
23 category -- whatever the protected category is, are treated
24 differently in compensation for performing equal work with
25 respect to responsibilities, so qualifications and skills.

N9LDROWC

1 Once that is established, then the burden shifts to
2 the defendants to put forward an affirmative defense that is
3 recognized by the law. And so that's a different structure
4 than the New York City Human Rights Law, which requires
5 plaintiff to bear the burden with respect to establishing a
6 discriminatory or retaliatory modus and the existence of bias.
7 So that is the biggest distinction between the two. There are
8 others with respect to the evaluation of comparators, and the
9 slightly different analysis under the New York Equal Pay Law
10 than the New York City Human Rights Law. And who is a
11 comparator for both of those laws differs slightly. So those
12 are the most material differences between the two.

13 There are also differences with respect to damages
14 that are available under the two laws.

15 THE COURT: What are the differences in damages?

16 MS. GREENE: Under the New York Equal Pay Law,
17 there's, first, damages with respect to the difference in
18 compensation. There, under the New York Labor Law, is a 100
19 percent liquidated damages provision that is applicable, and --
20 unless the defendant puts forward certain defenses, and a 300
21 percent liquidated damages provision where the employee is able
22 to show that there was willfulness as defined by the law.

23 So under the New York Equal Pay Law, it's a liquidated
24 damages scheme. Under the New York City Human Rights Law, in
25 addition to the economic losses covered by the individuals,

N9LDROWC

1 there is compensatory damages and punitive damages, both of
2 which are unpassed under the New York City Human Rights Law.

3 THE COURT: All right. Mr. Gage, do you have anything
4 to add or quibble with in terms of what Ms. Greene explained?

5 MR. GAGE: I think that was generally an accurate
6 description of the differences between the claims, your Honor,
7 and the differences between the damages. And to the extent
8 there are any subtle differences, those are kind of flushed out
9 in our competing charges.

10 I think we agreed on charges for much of this, but
11 then there are a couple of them where there's a slight
12 variation. But I think there's a couple where the issues are
13 crystallized, which is in the jury charges.

14 THE COURT: Well, so far this is going very well. I'm
15 not sure you actually need me. But let's keep going and see
16 what happens.

17 All right. I want to turn to some housekeeping
18 matters. So, first, I notice in the joint pretrial order, you
19 say that you submitted your proposed demonstratives over the
20 summer, that we're on top of it. You also say on August 4th,
21 you submitted objections, that we're not finding, so I'm not
22 sure what happened to --

23 MS. GREENE: Your Honor, may I speak on that?

24 THE COURT: Yes.

25 MS. GREENE: Yes, your Honor. The parties exchanged

N9LDROWC

1 with each other any objections they had with respect to
2 demonstratives. The nature of the objections that the parties
3 raised are not any that require your Honor's rulings today.

4 THE COURT: Oh, okay. So where it stands with the
5 Court is that you -- did you propose them to us or to each
6 other?

7 MS. GREENE: Your Honor, I believe it was just
8 exchanged between the parties and not provided to --

9 THE COURT: Okay. So we haven't seen them at all
10 then. All right. Well, I'll have to take a look at them. It
11 doesn't need to be now, but it would be good to get those a day
12 or two in advance.

13 MS. GREENE: Your Honor, absolutely. And if I may,
14 the nature of the objections that the parties have raised
15 relate to whether the underlying evidence comes into the
16 record, and to the extent that it does, there are no objections
17 to demonstratives.

18 THE COURT: I see. Now I'm being told that we do
19 actually have your demonstratives.

20 MS. GREENE: Okay.

21 MR. GAGE: Yes, your Honor. You have the
22 demonstratives, not the objections --

23 THE COURT: Got it.

24 MR. GAGE: -- that were exchanged between us, and I
25 anticipate the objections will probably be obviated as

N9LDROWC

1 Ms. Greene suggests once you've actually ruled on the actual
2 evidence and the exhibits.

3 THE COURT: I understand. That seems like enough on
4 that for now.

5 I want to talk to you a little bit about the mechanics
6 of jury selection. I use the struck panel method, which is
7 pretty common in this district, as you know. So, in brief, I
8 will ask questions of the potential jurors, and I will
9 periodically excuse jurors for cause. I'll incorporate the
10 questions that I think appropriate in my voir dire, and as I go
11 through the voir dire, I will ask if you believe there is any
12 follow-up that I need to do, and then I'll ask any additional
13 questions. If anyone is not comfortable speaking in front of
14 the whole group, we'll do it at sidebar or I'll adjourn to the
15 robing room.

16 I will qualify a panel of 14 prospective jurors, and
17 then you will each exercise your peremptory challenges, three
18 per side. You will exercise those challenges simultaneously,
19 by writing them down on a list. You will exchange those lists,
20 and present them to me. If there are duplicates on your list,
21 that is to say each of you strikes the same juror, then so be
22 it. The jury will be the lowest 8 jurors who remain after the
23 exercise of peremptory challenges. So if there are no
24 duplicates, there will be only 8 jurors remaining in the box,
25 and that will be the jury. If there are duplicates, juror 14

N9LDROWC

1 would not be part of the jury, even if that person were not
2 struck. That is to say, it's the lowest eight numbers that
3 remain.

4 In that regard, in the civil system, there are no
5 longer alternates, so, again, there will just be eight jurors,
6 and we can go down to six. There have to be at least six, but
7 with eight, in case we lose anyone after several days, we'll
8 have some wiggle room.

9 Unanimity will be required in light of your statement
10 to that effect in the joint pretrial order. In terms of
11 timing, when the jurors first report, they will have to take
12 care of some preliminary matters, so they likely will not
13 arrive in the courtroom until around 10:00 or 10:30. I tell
14 you that because there will likely be some time on Wednesday
15 morning to take up matters before the jury -- the prospective
16 jurors come in if we need to.

17 With respect to the schedule, on Wednesday the 4th,
18 I'd like you to be in the courtroom at 9:00. As I noted a
19 moment ago, the hope is that the jury pool will be ready around
20 10:00 or 10:30, and we will continue until 5:00 p.m. that day.
21 Ideally, we will get through jury selection, as well as
22 openings. The first day we may even get into the presentation
23 of evidence that day. So please be ready with your first
24 witnesses. If not, we'll pick up with that on day two.

25 For every other day of trial, the trial itself will

N9LDROWC

1 begin at 9:30 a.m., but I'd like the parties to be in the
2 courtroom by 9:00 in case there are any pre-testimony issues
3 that need to be resolved. So just to clarify. We, that is the
4 parties and myself, will meet from 9:00 to 9:30 each day,
5 unless there's no reason to do that, but I think we should all
6 reserve that time for hashing out issues before the jury comes
7 in. I will then have the witness on the stand starting at 9:30
8 a.m., with two 20-minute breaks. The first break will take
9 place 11:00 to 11:20, and the other in the afternoon from
10 approximately 12:50 to 1:10. We will going until approximately
11 2:40 p.m. each day.

12 I'm going to provide breakfast in the morning, and
13 snacks for the later two breaks, so that there is no need for
14 anyone to leave the courthouse. It just doesn't work well for
15 people to leave the courthouse for lunch, go out, try to find
16 food, eat the food, and then have to go back through security
17 to resume in the afternoon. The length of time that we would
18 ideally want to carve out for that is not an amount of time
19 than ends up working well. So that's part of the reason for
20 the schedule that I'm going to follow.

21 Just a review, the first day of trial, which will be,
22 you know, jury selection, et cetera, will be a regular 9:00 to
23 5:00 day, with all other days of trial running from 9:00 to
24 9:30 for this group, 9:30 to 2:40 p.m. for the jury, and,
25 again, 9:00 to 2:40 p.m. for counsel.

N9LDROWC

1 Please note that if for some reason you find yourself
2 without witnesses on a given day, then you shall rest. We are
3 not going to have continuances to wait for someone to show up.
4 So, you know, please proceed with that in mind. I don't want
5 to waste your witnesses' time by having them wait around only
6 for it to turn out that they will not be testifying until the
7 next day, but, by the same token, I don't want to send the jury
8 home at 1:00 p.m. or whatever time it is because we don't have
9 any more witnesses for the day.

10 The Joint Pretrial Order outlines a host of objections
11 to designations and exhibits. We will address those later in
12 the mornings, at lunch, or at the end of the day as they become
13 relevant. I would like to have as few side bars as possible,
14 but by the same token, I want to wait to see how the evidence
15 is unfolding before I make rulings on much of what you have put
16 forward at this point. If you can anticipate issues in advance
17 of them arising during trial, it would be much better for
18 everybody, you guys, me, and the jury, to raise them before we
19 start the trial day, or at the end of the trial day, or in
20 advance of trial starting. I'm just going to rely on you to
21 make sure that the issues that need to be resolved and teed up
22 are, in fact, teed up, so we have as few surprises as possible.

23 Regarding using depositions, I expect that you will
24 have copies for me the day of trial, when deposition testimony
25 is likely to arise, so that if there are any objections with

N9LDROWC

1 respect to the usage of the deposition transcript or
2 introduction of prior testimony, I can review at the
3 appropriate time. I know that corrected deposition transcripts
4 have been sent in, and so you'll just bring them on the
5 appropriate day. We were starting to try to keep up with the
6 corrections that are coming in, and it's really difficult for
7 us to do this, because of the volume of what has been provided
8 in hard copy, which I know we asked for, but it's an enormous
9 volume, and to try to figure out where to slot in corrected and
10 whatever, it's just too hard. I certainly don't want people
11 resubmitting everything just so that we can have a few
12 deposition transcripts in their most current version, but I'll
13 get them the day that they're going to come up.

14 Exhibits, I wanted to note that you'll be required to
15 premark the exhibits, so label them in advance of the trial so
16 that you're not fumbling through exhibit stickers in front of
17 the jury and wasting time that way. Just be prepared and have
18 them ready to go.

19 To the extent that you're planning to use the
20 electronic system in the courtroom, which I believe you are,
21 that tends to work well. You can show whatever you have to the
22 witness on the witness screen and counsel screen, and then if
23 the -- whatever it is is admitted, and you request permission
24 to publish it to the jury, then my deputy and I can show it on
25 the jurors' screens as well. I would recommend that you have

N9LDROWC

1 hard copies of anything as a backup plan, because there's
2 always the risk that the electronic system fails. So it's good
3 to have a plan B.

4 In terms of laying a foundation for exhibits, and
5 specifically for those where there has been no objection,
6 unless there is actually a stipulation, pursuant to which they
7 would be admitted, this is always helpful. In that case, you
8 would write the stipulation down and mark it as an exhibit.
9 Then you can offer other exhibits pursuant to it, saying that
10 they qualify as business records or what have you. So I'd like
11 to do as much of that by stipulation as possible.

12 Objections to questions, I don't want to have speaking
13 objections in front of the jury, so what I'd like to do is have
14 you say objection, and a single word or two to identify the
15 basis for your objection, foundation, relevance, hearsay, et
16 cetera. If I feel a need to have a sidebar, I will, but that's
17 not going to be generally the practice in this trial. So,
18 again, please raise things in advance each day if you see
19 issues coming.

20 Witnesses, I don't want witnesses to be called twice,
21 so to the extent there is overlap between the parties'
22 respective lists, and I do think there are ten overlapping
23 witnesses between your lists, I will allow the defendant on
24 cross to go beyond the scope of the direct, as, obviously, they
25 would be permitted to do that on their own direct, given that I

N9LDROWC

1 think we can proceed much more efficiently, and it will be
2 better for everybody. So if there's any issues with that,
3 hopefully you can talk to each other and work that out.

4 Now, that is a segue into the next issue I wanted to
5 address today, and that is timing. You've identified 29
6 witnesses in total, and you're asking, for plaintiff, around 20
7 hours, and defendant around 25 hours. I know that you have --
8 both of you have may call lists, and between the two of them,
9 though, that testimony only amounts to a couple of hours. So
10 it's a very tiny percentage of what you are looking for
11 overall.

12 There seems to me to be ten or so key people who have
13 been involved in the decision-making at issue. To me, 29 and
14 45 hours seems excessive in a single plaintiff, single
15 defendant case, so I want to hear you out today on who you
16 consider to be the key witnesses, and how much time you think
17 they need. Also, I want you to tell me if, apart from what's
18 listed in the joint pretrial order -- whom you actually plan to
19 call. I want to hear you out on all of that today, but I think
20 this list is going to need to be pared down. What I will do
21 is, in the end, I will establish an amount of time that we're
22 going to use, and I'll let you figure out for yourselves how
23 you want to use that time.

24 So, Ms. Greene, do you want to start talking about
25 your key people, and also whether you actually intend to call

N9LDROWC

1 everybody on your "will call" list?

2 MS. GREENE: Thank you, your Honor.

3 In terms of our key witnesses, we have Ms. Rowe,
4 obviously, the plaintiff; we have her comparators, Nick
5 Harteau, Ben Wilson, and Evren Eryurek. Wilson and Eryurek are
6 both deponent testimony, deposition testimony, so they won't be
7 appearing live. We have Will Grannis and Tariq Shaukat. We
8 have Mr. Breslow, Mr. Vardaman, and Ms. Lawrence. We have,
9 your Honor, worked together as the parties to schedule a
10 potential witness order, and to make sure that we are
11 efficiently using our time.

12 I'll say that when we did that, I don't know that we
13 took into account an ending time of 2:40 each day. Our time
14 estimates, we've estimated the time for a witness using --
15 considering both plaintiff's time and defendant's time. With
16 Ms. Rowe, we would anticipate, if she began on the 4th, that
17 her testimony would end on the 5th. Mr. Harteau would follow
18 her, and that is -- his testimony is quite brief.

19 THE COURT: Mr. Harteau, what's his role?

20 MS. GREENE: Mr. Harteau is a comparator for purposes
21 of the New York Equal Pay Law, as well as the New York City
22 Human Rights Law. He offered a --

23 THE COURT: Okay.

24 MS. GREENE: -- declaration in support of summary
25 judgment. His testimony we estimate to be brief, approximately

N9LDROWC

1 30 minutes, if not less.

2 Ashley Tessier --

3 THE COURT: Okay.

4 MS. GREENE: I'm sorry, your Honor.

5 THE COURT: No. Go ahead.

6 MS. GREENE: On Friday the 6th, we would expect to
7 call Ms. Tessier, who's being offered for the limited purposes
8 of establishing a hearsay exception to the investigative notes.
9 We have asked for a stipulation. At most, we expect her
10 testimony to last approximately 15 to 30 minutes.

11 Jenny Burdis, who was the recruiter for the technical
12 directors and OCTO, her testimony is by deposition.
13 Ms. Spokane, who did the ER investigation; and Brian Stevens,
14 who was the chief technology officer, head of OCTO, would also
15 appear on Friday. And, again, we estimate approximately an
16 hour total time for Ms. Spokane, and approximately 30 to 45
17 minutes for Mr. Stevens.

18 On the 10th, we would call Will Grannis, Melissa
19 Lawrence, and Ben Wilson by deposition. Mr. Grannis' testimony
20 I think we anticipate in total being somewhere in the three to
21 four-hour range for both parties. That's our estimate.
22 Ms. Lawrence I think we estimate to be in the hour to hour and
23 a half range. Mr. Wilson, I don't know that we've timed how
24 long the parties' designations will be in total.

25 The 11th, we anticipate calling Tariq Shaukat; Kevin

N9LDROWC

1 Lucas, who is being offered for a limited purpose; and Evren
2 Eryurek. Mr. Shaukat's testimony will be somewhere in the two-
3 to three-hour range. Kevin Lucas, less than an hour, and Mr.
4 Eryurek is a brief witness as well.

5 On Thursday the 12th, we anticipate calling Stuart
6 Breslow, who, from your Honor's recounting of the facts, was a
7 comparator under Tariq Shaukat, and also was given the head of
8 financial services role. Stuart Vardaman, the recruiter for
9 purposes of the head of financial services role and the VP
10 sales role, the retaliation claim, is appearing by deposition.

11 And then on the 12th, we anticipate also calling
12 Ostrofe, our expert. And on the 12th is when plaintiff
13 anticipates resting her case.

14 THE COURT: All right. Is that everything that you
15 put in your joint pretrial order for the plaintiff's side?

16 MS. GREENE: Your Honor, it depends on which version
17 of the joint pretrial order you're looking at. The last
18 version I think is very consistent with that.

19 THE COURT: It is the second, second amended.

20 MS. GREENE: Correct, your Honor. Yes, your Honor.

21 We have some "may call" witnesses. It's dependent on
22 whether underlying exhibits are stipulated to or not. For
23 instance, we've identified Mr. Kurian. He is being called for
24 a very limited purpose, which is to establish corporate
25 knowledge of Ms. Rowe's complaints. If it's possible, the

N9LDROWC

1 parties may be able to stipulate to that knowledge, in which
2 case we would not need to call him as a witness.

3 Diane Greene is dependent on, again, certain testimony
4 that may or may not come in.

5 THE COURT: All right. So, in other words, what
6 you've just run through is about 20 hours.

7 MS. GREENE: Yes, your Honor. Approximately.

8 THE COURT: I think that's too much. I think that's
9 too much. Why can you not do this as -- it's a single
10 plaintiff case. I understand there are different scenarios
11 here, but why can you not do that in ten hours?

12 MS. GREENE: Because these claims -- first of all,
13 there's multiple claims, standing mirrors, and so, you know,
14 there's key testimony with respect to comparators with respect
15 to what we refer to as the bad actors, the recruiters, and the
16 ER and HR investigators. So, you know, we have tried to keep
17 this as focused as possible, and have eliminated any extraneous
18 witnesses, especially when there's documents that could replace
19 that deposition -- examination testimony, but, you know, for
20 purposes of the burden that we bear, on all four of the claims,
21 this is the evidence that's necessary to meet our burden.

22 And, your Honor, just to be clear, our estimates of
23 time include, again, both direct and cross-examination, and
24 defendant's examination exceeds cross-examination.

25 THE COURT: All right. So that time, 20 hours,

N9LDROWC

1 doesn't even include your openings?

2 MS. GREENE: No, your Honor. We would estimate
3 openings to be less than 30 minutes for plaintiff. I don't
4 know how long defendant would intend to give for the opening,
5 but we believe in opening in the 15- to 30-minute range is
6 sufficient for the claims here.

7 THE COURT: All right. Mr. Gage, let me segue to you.
8 You're asking for 25 hours. Why can't you do this in ten to --
9 ten hours.

10 MR. GAGE: Well, your Honor, I will play Name that
11 Tune. We can do it in a lot less than the original prediction.
12 Indeed, over the last few weeks, opposing counsel and we
13 collaborated on an order, and agreed -- I thought agreed on an
14 order which was almost exactly as Ms. Greene described. She's
15 listed a couple of them in terms of order. In addition to the
16 witnesses she's just described, we would have five witnesses in
17 our case, each of whom is very brief, none of whom would be
18 more than one hour. And so beyond the testimony that
19 Ms. Greene just described, beyond those witnesses and our
20 examination of them, I would anticipate we would have, you
21 know, five, six hours of a defense case.

22 And I would just reiterate, in terms of what
23 Ms. Greene said earlier, we had spent a fair amount of time
24 trying to agree on the order, so we knew who needed to be
25 where, when, because many witnesses, some are no longer

N9LDROWC

1 employed by the company, many are coming from out of town, so
2 we've been coordinating travel arrangements. We did not
3 anticipate ending at 2:40, and so I -- and I don't know what
4 Ms. Greene thinks about this, but I think, given that we're not
5 going past 2:40 on any given day, except the first day, I
6 suspect that some of those days might have to shift.

7 THE COURT: All right. I just lost the camera. One
8 second.

9 MR. GAGE: And one other thing, and I think Ms. Greene
10 will try her case however she sees fit, and your Honor allows,
11 but we do have a few witnesses whose testimony is presented by
12 deposition, which I think allows us some flexibility to move
13 around if the schedule shifts a little bit and a witness is
14 flying in, but we have, you know, testimony to be presented by
15 a deposition.

16 THE COURT: All right. So what you've just told me,
17 is that different in any way from what you've laid out in the
18 joint pretrial order?

19 MR. GAGE: It's much shorter. It's much shorter.

20 THE COURT: Okay. So instead of 25 hours, you just
21 said 5 to 6 hours of defense case, right?

22 MR. GAGE: Exactly, your Honor. But that does -- the
23 five to six hours does not count the time for us to examine the
24 witnesses that Ms. Greene is calling. The days that she laid
25 out are consistent with the days that we had agreed would be

N9LDROWC

1 necessary for the witnesses she described. Is that --
2 hopefully, that answers your question.

3 THE COURT: I think so. I'm trying to get to a total
4 -- so five to six hours, not including the time that you need
5 to examine the plaintiff's witnesses. Where do you think you
6 end up in terms of total hours?

7 MR. GAGE: I haven't calculated that, your Honor.
8 Maybe 15 to 20, your Honor? I hadn't thought about it that
9 way, because we had agreed on the order and the amount of days
10 it would take.

11 THE COURT: All right. Fifteen to 20, that brings us
12 down to as many as 40 still. I'm going to give thought to what
13 you've said today. Does anyone want to say anything else about
14 the number of hours, the need for the hours, and the prejudice
15 you believe you would experience if they were shorter? Because
16 I do think that even 40 hours for a -- this is a single
17 plaintiff, single defendant case. That is a lot of court time
18 in a case like this. So I want to hear you now.

19 I'm not going to decide this is at the moment. I'll
20 get back to you about the amount of time. But anything else
21 anyone wants to say to me, please tell me now about timing.

22 MS. GREENE: Your Honor, in my experience, and this is
23 my -- my experience, trial -- between arbitration and jury
24 trials, 7 days tends to be the average for a single plaintiff
25 case in trial, and that is, you know, using the time as

N9LDROWC

1 efficiently as possible. So experience suggests that 7 hours
2 -- or 7 days is a timeframe that is manageable and does not
3 include unnecessary and inefficient testimony.

4 So we also take into account that I believe the Court
5 is closed on Monday the 9th for Columbus and Indigenous Persons
6 Day. If that's not the case, we'd like to know. But with our
7 parties working cooperatively to set a realistic schedule, I
8 think places us finishing the case around the 16th or 17th of
9 October. I think there is -- I can speak for plaintiff. I
10 know we've discussed it some with defendant, some value in
11 doing the cost method, where both sides have, you know, a
12 specific amount of time for their case, and to use as they
13 need. I think that encourages the parties to be efficient.
14 And I would certainly rather schedule more time, and be able to
15 dismiss the jury early than to find that we would be prejudiced
16 by not being able to call certain witnesses and exceed the time
17 that we indicated to the jury would be the time of service in
18 this case.

19 THE COURT: All right. Well, in terms of keeping
20 track -- go ahead, Mr. Gage.

21 MR. GAGE: I would agree with Ms. Greene that the
22 number of days, the days that Ms. Greene laid out, is
23 consistent with single plaintiff cases that I've tried over the
24 last 30 years in terms of the amount of time. And I think we
25 have, particularly compared to our original estimates and our

N9LDROWC

1 original lists of witnesses, we have worked cooperatively to
2 make this an efficient presentation, cut down the number of
3 witnesses, and get them scheduled on days so that we can make a
4 presentation to the jury that's sufficient.

5 THE COURT: All right. In terms of the mechanics of
6 keeping track of time, unless you'd like to agree on someone
7 else to keep track of the time, I'll keep the clock, and I will
8 -- I don't know about a chess clock, but I will give you a
9 sense at the end of each day how much -- each trial day how
10 much time you have left.

11 MR. GAGE: And if I could ask, your Honor, does that
12 mean each side?

13 THE COURT: Yes.

14 MR. GAGE: Give each an amount we have left?

15 THE COURT: Yes. I do want to ask a more specific
16 question about potential issue of cumulativeness. It seems
17 that there -- and, again, the description's kind of high level,
18 but there are numerous witnesses that -- who are on the list to
19 describe the hiring level and job responsibilities of technical
20 directors in OCTO. How are they not cumulative, those
21 witnesses?

22 MS. GREENE: Your Honor, with respect to the
23 comparators, they're not cumulative, because, you know, as to
24 whether any one individual is a comparator for purposes of
25 either the New York Equal Pay Law or the New York City Human

N9LDROWC

1 Rights Law, will be dependent on the specific performance of
2 duties for that comparator. That being said, those witnesses I
3 think are very brief in terms of their own description of their
4 own job duties.

5 Beyond that, there is evidence that relates to the
6 leveling decisions, and that relates most to plaintiff's case,
7 establishing the comparability of the work that's being
8 performed, and Ms. Rowe's skills, judged against the leveling
9 mechanism. But, also, that goes to plaintiff's ability to
10 defeat any affirmative defenses as to non-discriminatory
11 reasons that defendant may assert are the reasons for their
12 leveling decisions, so those witnesses that have been
13 identified for those purposes, the parties still intend to
14 call. The testimony is unique, and is not duplicative.

15 THE COURT: All right. Mr. Gage, do you have anything
16 to say about that?

17 MR. GAGE: Sure, your Honor.

18 Each of the witnesses that Google intends to call,
19 either in our own case or to examine during plaintiff's case,
20 offers something unique, and to the extent that in our joint
21 pretrial order, we do mention some subjects that overlap, we
22 absolutely do not intend to beat any dead horses. And as the
23 testimony comes in, when a second witness comes in, we're going
24 to offer that witness' unique testimony, and we do not intend
25 to plow ground previously plowed. But when we did the list and

N9LDROWC

1 we identified the subjects, we did not know what the order was
2 going to be, and so in order to accurately inform the Court of
3 a general description of what these folks had to say, it
4 appears there's some duplication. But rest assured, I do not
5 want to present repetitive testimony in front of a jury.

6 THE COURT: I'm sure that's true. Now, I'm going to
7 think a little bit more. In listening to you now, I'm going to
8 think a little bit more. Don't have people change flights and
9 whatever yet, because I'm going to think a little more about
10 the trial day. I do want to have it structured so people don't
11 have to go out of the courthouse for lunch, because that just
12 ends up, as I mentioned, resulting in a lot of problems with
13 people coming in late, and they can't help it. They're stuck
14 at security and whatnot. But I'm going to give that a little
15 more thought.

16 Let's talk about Thomas Kurian. It looks like the
17 plaintiff wants him to talk about P-83, which is an e-mail
18 thread sending articles reporting about the filing of this
19 lawsuit, and Google objects under Rules 401 and 403. The
20 emails seem at least arguably relevant since part of
21 plaintiff's retaliation claim is that she was not interviewed
22 for the vice president, financial services industry lead
23 position after filing this suit. But I'd like to hear from
24 both of you now on him.

25 MR. GAGE: Sure. I'll go first, your Honor, in the

N9LDROWC

1 face of silence from Ms. Greene.

2 Mr. Kurian had absolutely nothing to do with any of
3 the decisions at issue in this case. Mr. Kurian is the CEO of
4 Google Cloud. He joined the company after much of the events
5 in this -- at issue in this case occurred. He was not involved
6 in any decisions. And the fact -- and all that email shows is
7 that somebody told him that there was a press article about the
8 lawsuit that Ms. Rowe filed, and so he, as a witness, has
9 absolutely nothing relevant to say for the jury.

10 And the exhibit itself, I mean, the parties can
11 stipulate to the fact that Ms. Rowe filed a lawsuit in I think
12 it was August of 2019, or whenever it was. That's a matter of
13 record. But there's absolutely no reason for Mr. Kurian, plus,
14 he's in California. He hasn't been subpoenaed. He has nothing
15 relevant to say. And the exhibit itself is not relevant to the
16 case.

17 THE COURT: All right. Ms. Greene.

18 MS. GREENE: Your Honor, if I may, yes, my colleague,
19 Ms. Gelfand, who was admitted in 2019, is prepared to argue
20 this issue if it's acceptable to your Honor.

21 THE COURT: I'd be pleased to hear from Ms. Gelfand.
22 Go ahead.

23 MS. GELFAND: Thank you, your Honor.

24 While Mr. Kurian was not a decision-maker with respect
25 to Ms. Rowe's claims, this -- you know, this document

N9LDROWC

1 demonstrates he was knowledgeable about her complaints, he
2 sought a conversation about it, and this is directly relevant
3 to the issue of the jury determining liquidated damages under
4 the Equal Pay Law and punitive narcotics damages under New York
5 City's Human Rights Law.

6 This document demonstrates corporate knowledge at the
7 highest level, and that Mr. Kurian was knowledgeable about it,
8 spoke about it. And, you know, Google did not remedy
9 Ms. Rowe's complaints.

10 We also note that we have offered a stipulation to
11 defendant to note Mr. Kurian's knowledge as to Ms. Rowe's
12 complaint, and the complaint filed, and defendant declined that
13 stipulation. And that's why we have offered him as a witness
14 to testify as to this document.

15 THE COURT: All right. Diane Greene. So the
16 plaintiff wants Ms. Greene to testify about P-147, which is a
17 declaration Ms. Greene wrote in this case as part of an
18 application for protective order preventing the taking of her
19 deposition. Defendant objects to P-147 on hearsay grounds, and
20 to the witness under Rules 401 and 403.

21 Let's start with P-147. Isn't this hearsay? The most
22 relevant exception is 804(b)(1)(A), for testimony that was
23 given as a witness at a trial, hearing, or lawful deposition,
24 which this was not. Regarding the residual exception,
25 Ms. Greene's affidavit says, in effect, that she doesn't

N9LDROWC

1 remember any of this, so to the extent her declaration is
2 probative of anything, how are statements in her declaration
3 more probative on the point for which it is offered than
4 Shaukat's testimony?

5 MS. GREENE: Your Honor, the declaration would be
6 offered not with respect to Mr. Shaukat and the hiring process
7 for the financial services head. Rather, it would be offered
8 with respect to the initial leveling and hiring decision.

9 Mr. Grannis testified at his deposition, as did
10 Ms. Burdis, as to who the decision-maker was, and points to
11 Ms. Greene. The fact that Ms. Greene in her declaration has
12 asserted that she does not recall nor does she believe that she
13 was part of that decision making, undermines that assertion of
14 Mr. Grannis and Ms. Burdis, and that's relevant with respect to
15 the affirmative defenses.

16 The defendant is required to show what the decision
17 was at -- you know, why the decision was what it was at the
18 time the decision was made. In this case, they can't say who
19 even was the decision-maker. There's disagreement amongst the
20 parties as to who the decision-maker was. They're not able to
21 meet that defense. It is only intended to be offered if that
22 becomes relevant.

23 So it's more in the nature of rebuttal evidence than
24 direct evidence, and so we put it on the list and put her as a
25 witness out of an abundance of caution, so that Google would be

N9LDROWC

1 on notice of our intent. But, again, it's really intended and
2 would be used as rebuttal evidence.

3 THE COURT: All right. Mr. Gage, anything else from
4 you on this?

5 MS. TOMEZSKO: I would like to speak on that, your
6 Honor.

7 THE COURT: I'm sorry. Just so that I can refer to
8 you by name, you are Ms. Tomezsko

9 MS. TOMEZSKO: Tomezsko, yes. Exactly.

10 THE COURT: Okay. Go ahead.

11 MS. TOMEZSKO: If you look at the testimony that
12 plaintiff herself has identified in this case as relevant
13 testimony from Ms. Burdis as to who made the decision, the
14 ultimate approval of the recommended level that Will Grannis
15 recommended with the input of others, that testimony shows that
16 Diane Greene -- and if you're able to access the deposition
17 testimony, it's on page 53 to 54 of Jennifer Burdis'
18 deposition. It's clear from her testimony that the final
19 decision was made by two SVPs within the organization, senior
20 vice presidents, if you will.

21 Diane Greene had access to all those packets, but so
22 did Irv Holvil and Sridhar Rajishami. And if you look at the
23 testimony, the question is, so who made the final decision with
24 respect to Ms. Rowe's level. The answer is the SVPs I just
25 listed. She had previously listed, Irv, Mr. Holvil, and

N9LDROWC

1 Mr. Rajishami, and said Diane Greene had access to the packet.

2 So I don't believe it's correct that Ms. Burdis
3 testified that Ms. Greene was the final decision-maker. I
4 think you could look at her testimony and determine that.

5 THE COURT: All right. Thank you.

6 I want to talk now about Patricia Florissi, if that's
7 the way you say it. Plaintiff objects to Ms. Flurisy
8 testifying under Rules 401 and 403, and because she was not
9 identified at any point in discovery allegedly, and was only
10 identified in the last month. Part of plaintiff's case is that
11 she has been paid at level 8, but has been doing work
12 equivalent to level 9.

13 Is there anyone else already testifying to plaintiff's
14 work since the spring of 2022?

15 MR. GAGE: No, your Honor. Ms. Flurisy has been
16 Ms. Rowe's manager since the spring of 2022. Ms. Rowe is
17 seeking, as you said, to recover back pay up to the date of
18 trial, and she's arguing that she's performing level 9 work.
19 And because this case has lasted for a long time, time has
20 passed, things change. Mr. Grannis managed Ms. Rowe up until
21 that point, and so there's nothing -- there is no surprise
22 here. Ms. Flurisy will testify as to the work that Ms. Rowe
23 has done and hasn't done, and it will be very brief. It's not
24 cumulative, and I think we're -- we should be entitled to
25 present them.

N9LDROWC

1 THE COURT: Why didn't you disclose her earlier?

2 MR. GAGE: She's been known to the plaintiff for a
3 long time, your Honor, and I believe we did identify her quite
4 some time ago. And, again, Ms. Rowe has known since the spring
5 of 2022 that she was working for Ms. Flurisy, so there's no --
6 there's no surprise. There's no prejudice here. And,
7 presumably, Ms. Rowe is going to take the witness stand and
8 talk about all of the things that she claims to be doing. We
9 should be entitled to have Ms. Flurisy come in and offer
10 Google's version of what's been -- what she's been doing and
11 not doing relative to level 8 versus level 9.

12 THE COURT: All right. Ms. Gelfand, if you're taking
13 this one, or back to Ms. Greene.

14 MS. GREENE: It will have to be me, your Honor.

15 There's multiple points here. One is that Ms. Rowe,
16 plaintiff, was not on notice that defendant considered her to
17 be a witness or have relevant testimony in this matter. And
18 Google has not supplemented their discovery at any point in
19 time to include information that relates to Ms. Flurisy.
20 Further, the allegation is that the leveling decision at the
21 time that it was made, and the compensation decision at the
22 time it was made give rise to the Equal Pay Law claims, and the
23 New York City Human Rights Law claims.

24 There is case law that I would direct your Honor to,
25 including *Rifkinson v. CBS*, and that case cite is *Crawford v.*

N9LDROWC

1 *Western Electric Company*, and I can certainly provide your
2 Honor with those citations separately, but it says, because an
3 employer's intent is measured at the time it makes the
4 challenged employment decision, post-decision performance of
5 either the plaintiff or the more favorably treated employee is
6 generally not relevant. *Crawford v. Western Electric Company*
7 said, plaintiff's performance after adverse employment action
8 is not probative of legitimate non-discriminatory basis for the
9 action.

10 Here, again, the role has changed and shifted over
11 time. The real measurement of whether claims exist under the
12 New York Equal Pay Law or the New York City Human Rights Law is
13 whether, at the time the decisions were made, and at the time
14 that work was being performed, Ms. Rowe was performing work
15 that was equal to Mr. Harteau and Mr. Breslow's. And so
16 together with the relevance, as well as the lack of defendant
17 providing any notice or discovery or supplemental discovery as
18 to Ms. Flurisy, plaintiff objects.

19 MR. GAGE: Your Honor, may I respond?

20 THE COURT: Yes.

21 MR. GAGE: Again, there was ample notice that
22 plaintiff knew that she had been managed by Ms. Florissi for
23 quite some time. Also, Defendant's Exhibit 98, which has long
24 been on the various iterations of defendant's exhibit list,
25 makes clear that Ms. Flurisy was in this role. So there's no

N9LDROWC

1 prejudice.

2 As to the arguments that counsel made about the law, I
3 just want to address those very specifically. The New York
4 Labor Law is being referred to as New York City's Equal Pay
5 Statute, does not govern leveling decisions. It governs pay
6 decisions. And the evidence will show, as you will see during
7 the course of the trial, that all of the L-8 and L-9 technical
8 directors hired in OCTO, Ms. Rowe's hiring package or
9 compensation package was the second highest.

10 And Ms. Rowe is claiming under the New York Labor Law
11 that she is doing equal work, equal work to people who are
12 level 9, and that she should be paid the same as people who are
13 level 9, and she is seeking back pay up to the present. And so
14 she needs to prove that she is doing equal work with people who
15 are paid more than her. And Ms. Flurisy is going to describe,
16 if she testifies, she will describe the nature of the work that
17 Ms. Rowe is doing, and how it differs from work that is
18 performed by people who are level 9 employees. And that is a
19 core part of Google's defense throughout this entire period of
20 time to their claim that she was paid inconsistent with the
21 law, and that she should have been paid what level nines were
22 paid.

23 And Ms. Flurisy also had input into comp decisions
24 that are at issue in this case, which will be before the jury.
25 She offered performance reviews, which the jury will hear

N9LDROWC

1 about. And this is a key part of Google's defense. Ms. Rowe
2 can't claim that, oh, I was misleveled at the time, you know,
3 six years ago, and that since then the jury should just assume
4 that she's doing equal work to people who are paid more. And
5 they've had all that discovery, the performance reviews.

6 MS. GREENE: Your Honor, if I could?

7 THE COURT: Yes.

8 MS. GREENE: If I may briefly address, we have not had
9 full discovery. And if this were such a key aspect of
10 defendant's case, we would expect him to fully supplement the
11 record, at a minimum offer Ms. Florissi for a deposition if
12 she's a key witness and became a key witness outside of the
13 discovery period. And that is why parties have an obligation
14 to update their initial disclosures, and, certainly, even in a
15 formal way, put the other side on notice. And so without
16 having full discovery, without having the benefit of all of the
17 compensation, related documents for the past year, not just the
18 outcomes, the underlying decision-making process, plaintiff is
19 severely prejudiced at offering assistance.

20 THE COURT: All right. Well, have you asked for that
21 additional discovery? Have you asked to take her deposition?

22 MR. GAGE: They have not asked to take the deposition,
23 your Honor. And they asked us to supplement compensation
24 information for the most recent comp cycle, which was the end
25 of '22, into '23. We did supplement all of that information,

N9LDROWC

1 not just for Ms. Rowe, but for the alleged comparators, so we
2 have supplemented the discovery they asked for. And they have
3 not asked for Ms. Florissi's deposition.

4 THE COURT: All right. So, Mr. Gage, we have a couple
5 weeks remaining now until trial starts. Are you willing to
6 present Ms. Flurisy for a deposition?

7 MR. GAGE: I don't know what her availability is and
8 opposing counsel's availability is for that deposition, but we
9 certainly would be willing to work with them for some time
10 limited deposition, if that's what your Honor is telling us we
11 need to do.

12 THE COURT: Well, I think to the extent that that
13 could resolve the issue here, then I think it should be done.
14 It's not that uncommon to, you know, when someone is being
15 disputed at this late point, there's really a lot of time still
16 before trial, so I would like the two sides to confer further
17 about Flurisy, and figure out whether a deposition -- it seems
18 to me, if her deposition is taken, that should cure the
19 objection. It seems to me -- what day is this? It's Thursday.
20 Send me a joint letter by the close of business tomorrow, and
21 update me on your discussions about Ms. Flurisy, and whether
22 your positions as to her have evolved at all at that point, and
23 also whether she is available to be deposed over the next I
24 guess week and a half, and what the plaintiff's decision is on
25 that.

N9LDROWC

1 But, to me, it seems like that could be a solution as
2 to this witness.

3 MS. GREENE: Thank you, your Honor. We'll do so.

4 THE COURT: All right. I just have a couple of
5 additional matters for today. One is, if you told me when the
6 third amended pretrial order is coming, I lost track of what
7 you said. When do you propose to submit that?

8 MS. TOMEZSKO: Your Honor, we have --

9 MS. GREENE: Your Honor, there --

10 MS. TOMEZSKO: Oh, I'm sorry. We sent it to
11 plaintiff's counsel this morning, with a redline I believe,
12 and, if not, we could supplement with a redline. We have it
13 waiting for their sign off. Understandably, we've all been
14 preparing to be here, so they haven't seen it yet. I don't
15 fault that, but as soon as we have that sign off, we can get
16 that on file. It's a very minor change.

17 THE COURT: Okay. So the corrections that chambers
18 have been alerted to in the past I think it's like 24 hours,
19 one category was corrected deposition transcripts, and then I
20 thought there was a second categorially which is deposition
21 designations; is that right? Is that what has given rise to
22 the need for the third amended joint pretrial order?

23 MS. TOMEZSKO: Yes. What's given rise to the need for
24 the third amended joint pretrial order is the inadvertent
25 omission of some objections to Ms. Burdis' deposition

N9LDROWC

1 transcript. These are objections we had asserted earlier, but
2 we apologize for the inadvertent omission in this round, or the
3 last round. And so it corrects for that.

4 THE COURT: That is fine. Thank you.

5 Now, I notice there are other lawyers on the docket,
6 but I am assuming insofar as any other lawyers did not attend
7 today's conference, you're going to be the lawyers trying this
8 case, correct?

9 MR. GAGE: That's correct, yes.

10 MS. TOMEZSKO: Yes, your Honor.

11 THE COURT: All right. A word about transcripts.
12 Now, have you thought about whether you plan to order the daily
13 transcripts?

14 MS. GREENE: We are, your Honor.

15 THE COURT: Okay. I was going to recommend that in
16 case the jury asks for a note for all evidence bearing on a
17 particular topic.

18 Finally, today's transcript, if you would please order
19 it and split the cost, and, with apologies to our court
20 reporter, I would like that to be available on an expedited
21 basis.

22 All right. Is there anything else either side would
23 like to raise today?

24 MS. GREENE: If I may, and I appreciate the Court's
25 busy schedule, but with respect to the jury charge --

N9LDROWC

1 THE COURT: Yes.

2 MS. GREENE: -- when might we expect to know the final
3 jury charge?

4 THE COURT: Sitting here at the moment, I don't know,
5 but I will consider that and let you know.

6 MS. GREENE: Okay. I assume the same is true then,
7 your Honor, with respect to the jury verdict form?

8 THE COURT: Yes, that is correct.

9 MS. GREENE: Your Honor, just a few small notes then.
10 Will the courtroom be available on October 3rd for a technology
11 run through, so that we can iron out any kinks ahead of time
12 before the jury is there?

13 THE COURT: I thought there was already a technology
14 run through, or was that --

15 MS. GREENE: Your Honor, we met with the technician
16 and your Honor's courtroom deputy, and familiarized ourselves
17 with it. We've not yet had a chance to actually hook up our
18 computers and monitors and make sure we're able to publish
19 electronic documents to the jury. And I think both sides would
20 like the opportunity to do so. Again, just to make sure that
21 prior to the jury being seated and the presentation of
22 evidence, we've worked out any technological issues.

23 THE COURT: Well, I'm certainly in favor of that. Let
24 me just look at the calendar one second.

25 Yes, that should be fine.

N9LDROWC

1 MR. GAGE: One logistical question, your Honor. Would
2 we be able to leave things in the courtroom each night or will
3 we need to vacate the premises of all of our -- we brought in
4 every day.

5 THE COURT: Oh, no. You can leave -- I used to do
6 what you do. I understand these problems.

7 MR. GAGE: I know you do.

8 THE COURT: You can leave things in the courtroom. It
9 will be locked, and it should be fine. So --

10 MR. GAGE: Okay.

11 THE COURT: All right. Ms. Greene anything else? It
12 sounded like you had a bit of a list, or have we exhausted it?

13 MS. GREENE: Your Honor, I think everything else can
14 wait until the trial is -- your Honor has indicated she prefers
15 to handle it on a daily basis.

16 THE COURT: All right. Then I'll look forward to
17 hearing from you tomorrow evening, and getting the third
18 amended joint pretrial order, and anything else you might need
19 the Court for between now and October 4.

20 I wish you well in between now and then.

21 So hearing nothing further, we're adjourned. Thank
22 you.

23 (Adjourned)
24
25